IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 16473 of 2004

Between:

Dasari Sarojini, D/o.Dasari Sanyasi Naidu, Processing and Sales Industrial Co-Operative Society, Devarapalli Village & Mandal, VisaKhapatnam Dist.

..... PETITIONER

AND

1 The Assistant Divisional Engineer, (Oeration) A.P.Transco, Chodavaram

Post, Visakhapatnam Dist.
2 The Territorial Distribution Engineer (Operation) A.P.Transco, K.Kotapadu

Post and Mandal, Visakhapatnam Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue rule nisi calling for the records leading upto and inclusive of the provisional Assessment Notice issued by the 1st respondent in case No.VSP/011/00062/04 dated 15-7-2004, and quash the same by issuing an appropriate writ, order or direction in the nature of certiorari.

Counsel for the Petitioner: MR.E.V.BHAGIRATHA RAO

Counsel for the Respondents: MR.M.SUBBA RAO

The Court made the following:

ORDER:

This writ petition is filed seeking a declaration that the impugned provisional assessment notice dated 15.07.2004, is arbitrary and illegal and for a consequential direction to the respondents to restore the power supply forthwith.

Under the impugned notice it has been stated that the service connection of the petitioner has been inspected on 13.07.2004 by ADE/DPE-I/VSP and during the inspection, certain irregularities have been found, which prima facie indicate that the petitioner is guilty of pilferage of energy. Having disconnected the power supply to the petitioner's service connection, she was informed that the value of pilfered energy was provisionally estimated at Rs.2,90,545/- and that if she is desirous of obtaining restoration of power supply, pending enquiry, a sum of Rs.1,45,272/- being half of the estimated amount together with reconnection charges has to be deposited. She was also informed that an enquiry will be conducted by the Superintendent Engineer/Divisional Engineer (Assessments), who will fix the amount of loss of power sustained by the Corporation and that the petitioner may make a representation to him in this regard.

The said notice is under challenge in this writ petition.

I have heard the learned counsel for the petitioner and Sri M.Subbarao, the learned Standing Counsel appearing for the respondents.

The learned counsel for the petitioner contends that the assessment made by the respondents under the impugned notice is erroneous and that the impugned notice is not in consonance with the provisions of the Electricity Act, 2003 (for short 'the Act').

It is to be noted that a Division Bench of this Court in Writ Appeal Nos.452 and 477 of 2004, while considering the scope of the provisions of the Act, held that under the Act there is no power while issuing provisional assessment to forthwith stop or disconnect power supply or call upon the consumer to pay even part of the provisional assessment amount till final assessment is made.

Having regard to the facts and circumstances of the case and following the ratio laid down by the Division Bench in the above case, I am of the view that the impugned notice cannot be sustained. Accordingly, the impugned provisional assessment notice dated 15.07.2004 is set aside and it is left open to the Assessing Authority to make a final assessment in accordance with law after affording due opportunity to the petitioner to submit his explanation.

Accordingly, the writ petition is disposed of at the admission stage with a further direction to the respondents to restore the power supply to the petitioner forthwith. No costs.

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16.09.2004

VGB

To

1 The Assistant Divisional Engineer, (Oeration) A.P.Transco, Chodavaram

Post, Visakhapatnam Dist.

2 The Territorial Distribution Engineer (Operation) A.P.Transco, K.Kotapadu

Post and Mandal, Visakhapatnam Dist.

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